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Current Topics.

The Middle Temple and the United States.

TO AMERICAN lawyers visiting England few of the sights that London has to offer makes an appeal so potent as does the Temple, the home of the Common Law, and more particularly the Middle Temple, between which and the United States the links of association have been many and striking. Between the venerable Inn of Court and the State of Virginia some of the early ties were recalled by the recent ceremony when a presentation set of the official reports of the Virginia Court of Appeals was handed over to the Middle Temple by Mr. H. F. BYRD, on behalf of the House of Delegates and Senate of the State. To no less distinguished a Middle Templar than Sir WALTER RALEIGH the founding of Virginia, so named in honour of the Virgin Queen, was largely due, and after his day the links of connexion between the Inn and the Colony were closely maintained till the severance came as a consequence of the Declaration of Independence. To that historic document five Middle Templars appended their signatures —EDWARD RUTLEDGE, THOMAS LYNCH, THOMAS HEYWARD, ARTHUR MIDDLETON and THOMAS MCKEAN, most of whom rose to high office in the judiciary. In recent years the old associations between the Middle Temple and the United States have been happily re-knit by the election of several distinguished American lawyers as honorary benchers of the Inn. The first to be so honoured—and he appreciated the distinction highly—was Mr. JOSEPH CHOATE, who represented his country for several years as Ambassador at the Court of St. James, and as some return for the cordial welcome he received at the Middle Temple, he presented the Inn with a valuable series of the American Digest, which has proved a welcome addition to that section of the library devoted to the laws of the United States.

Norman-French.

ALTHOUGH THE quaint festival held at the little town of Pewsey in Wiltshire last week, when town criers from all parts of the country assembled to compete for the National Town Criers' Championship, may only serve to evoke a smile in certain quarters, it, nevertheless, by the use of the time-honoured "Oyez, oyez, oyez," with which each competitor prefixed his proclamation, just as he does in the course of his vocation, is a picturesque reminder of the once all-pervasive influence of Norman-French in our national life and language. Probably the town crier's "Oyez," thrice repeated, is the sole survivance of the old language outside the confines of the law; but in our legal terminology its influence is still very marked, although we often fail to recognise its extent. Indeed our legal language is interpenetrated with words that have come to us from the Norman-French, and it is almost unnecessary to cite instances. Most of us recall from our student days that when two persons hold lands in joint tenancy they were said to be seised *per mie et per tout*, and it is only the frequency with which we use such an expression as *cestui que trust* that induces forgetfulness of its Norman ancestry. Of Baron PARKE, probably the greatest master of the Common Law that England has produced, one who loved the old ways with an intensity of zeal that sometimes caused amusement to his contemporaries, and still more to us, who is reported on one occasion to have taken "a beautiful demurrer" to the bedside of a sick friend to cheer him in his sickness, it was said that if he could have had his way, he would have made Norman-French the current language of the British Isles, and would have scouted the dictionaries of JOHNSON and WEBSTER as mere Moabitish innovations! The desire thus playfully attributed to the learned Baron was not realised, but the extent to which Norman-French still lives in the domain of law may, to some extent, be gauged by the number of words cited by the learned authors of the History of English Law as coming directly to us through French influence. Our legal, like our ordinary, language, derives from many diverse sources, hence its richness and flexibility.

The Craving for New Laws.

AN AUTHOR of reputation comes forward in the daily press with the wise suggestion "that motorists who run down people be required by law to stop, and that to drive away be a punishable offence. The right sort of motorist *would* stop." It would be as well if the letter writer had stopped, and asked himself whether it was not possible that his idea had already been conceived. A very little enquiry would have discovered s. 6 of the Motor Car Act, 1903, which requires any motorist to stop, if an accident occurs to any person, whether on foot, horse-back, or in a vehicle, or to any horse or vehicle in charge of any person. The direct penalty is not great, being £10 for a first offence, £20 for a second, and the same, or a month's imprisonment without the option of a fine for a third or

subsequent offence, but the offender may be disqualified from driving for any period the convicting bench thinks proper, it may be for a considerable term of years. A little reflection leads however to the conclusion that such a provision is likely to be of least use when most wanted. A driver who fears he has killed a man may be deterred by his own inherent sense of decency and humanity from running away. If he is a coward, an additional penalty will hardly keep him on the spot to face a possible trial for manslaughter. It is one of the more foolish tendencies of civilized man to overestimate the effect of law on conduct. There is for ever a cry for fresh legislation to meet evils which very often are either the subject of existing law, or are irremediable while human nature remains what it is. A depressing chapter of legal history could be written upon still-born statutes. So far, in England, the tendency to pass restrictive laws on any and every occasion has been kept within some sort of bounds. Here their impotence is demonstrated by nothing worse than a legal speed limit for mechanically propelled vehicles retained long after, by universal accord, it is treated as obsolete. We can look across the Atlantic and see law and order in danger of something like collapse as a result of trying to make people good by law. By all means let us make laws on suitable occasions, but let us try to be clear what are the limits of their effectiveness, and above all find out whether our proposals are really as new as we think them.

No Cheques Taken. A Strange Judicial Episode.

THE DAILY PRESS has reported a remarkable story which one hesitates to believe, at least as related. A young man was fined for a motor offence and convicted. The father tendered a cheque in payment of the fine. This was refused, with an intimation that, unless cash was forthcoming, the case would be re-tried and a higher penalty be imposed. Cash was not forthcoming, the case was "re-tried," and a heavier penalty inflicted. Assuming the truth of the report, the action of the justices was hopelessly illegal. It is true that they may alter their decision on good grounds during the same sitting, but they have no power whatever to hear a case *de novo*, if it has once been heard regularly. To alter their decision on such extraneous grounds as inability forthwith to pay cash is quite inadmissible, and sins against common sense as well as the law. The Home Secretary is said to have refused to intervene—a quite proper decision. He is not a court of appeal from justices. The remedy was an appeal to sessions or to the High Court, both rather expensive undertakings. Another method, which would require some courage, would be for the convicted person steadfastly to refuse to pay more than the fine originally imposed, and, if the justices attempted to enforce the second conviction, get it quashed on *certiorari* and sue the justices.

Hearing of Petitions under Legitimacy Act, 1926, *in camera*.

IN A CASE under the Legitimacy Act, 1926, which was recently heard by His Honour Judge DOBB at Lambeth County Court, the question was raised whether a petition under the Legitimacy Act, 1926, should be heard *in camera*, and the learned judge suggested that power might usefully be granted to the courts by rules to hear such petitions *in camera*, as otherwise persons might not be so ready to avail themselves of the privileges conferred by that Act.

There seems no reason why, in a proper case, such petitions cannot be heard *in camera*. Although, as a general rule, no proceedings may be so heard unless there is some statutory provision to that effect (e.g., under s. 114 of the Children Act, 1908), the courts nevertheless have an inherent power to try cases *in camera*, where justice could not otherwise be done.

The leading case on the subject is the decision of the House of Lords in *Scott* v. *Scott*, 1913, A.C. 417, and the general principle with its exceptions was thus stated by Viscount HALDANE, L.C. (at pp. 437, 438): "While the broad principle is that the courts of this country must as between parties administer justice in public, this principle is subject to apparent exceptions . . . But the exceptions are themselves the outcome of a yet more fundamental principle that the chief object of courts of justice must be to secure that justice is done. In the two cases of wards of court and lunatics the court is really sitting primarily to guard the interests of the ward or the lunatic. Its jurisdiction is in this respect parental and administrative, and the disposal of controverted questions is an incident only in the jurisdiction. It may often be necessary in order to attain its primary object, that the court should exclude the public. The broad principle which ordinarily governs it therefore yields to the paramount duty, which is the case of the ward or the lunatic. The other case referred to, that of litigation as to a secret process, where the effect of publicity would be to destroy the subject-matter, illustrates a class which stands on a different footing. There it may well be that justice could not be done at all if it had to be done in public. As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield."

The principle underlying these exceptions to the general rule may aptly be described as being that the administration of justice would otherwise be rendered impracticable, whether because the case could not be effectively tried, or because the parties would be reasonably deterred from coming before the court.

Thus it is on this ground that on the hearing of nullity petitions the court is often ordered to be cleared in order to enable a petitioner to give her evidence more readily, and there seems no reason why in a proper case the court may not exercise a similar power on the hearing of a petition under the Legitimacy Act, 1926.

At the same time it would seem advisable that rules should be made to deal explicitly with this matter.

Withdrawing a Warrant of Apprehension.

THE APPLICATION to Sir CHARTRES BIRON, at the Bow Street Police-court, for the withdrawal of the warrant against Captain ARTHUR for conspiracy to receive two cheques for £150,000, stolen from the Indian Prince, so foolishly sought to be disguised as "Mr. A," is an instance of a proceeding which has no statutory authority, but whose propriety seems to lie in the nature of things. A warrant of apprehension is in force until it is executed. Such a warrant is a written order from a magistrate for the arrest of a person who has committed an offence against the criminal law. It is really a delegation of his own personal authority to arrest the wrongdoers. It is common sense that a man who gives an order may countermand his order, and though, in the case of a judicial officer of the Crown, acting in the execution of his office, there must be very strict limits to his action, it has been constant practice, never challenged in the High Court, for magistrates, on good cause shown, to allow the "withdrawal" of a warrant. It is, as Captain ARTHUR'S counsel stated before the chief magistrate, usual for the withdrawal to be asked for by the person who obtained the warrant, but as the Summary Jurisdiction and Indictable Offences Acts are silent on the point there is no particular form of proceeding. The chief magistrate remarked, very properly, that anyone can make an application for a warrant to be withdrawn. There are ample safeguards against the abuse of the power to allow withdrawal. By s. 3 of the Prosecution of Offences Act, 1879, the Director of Public Prosecutions must be informed by the justices' clerk, or the clerk to a police-court, of the withdrawal of a prosecution. In the present instance the defendant's solicitors had been in communication with the Director, who did not oppose the withdrawal.

The Charge of "Molesting."

By E. P. HEWITT, K.C., LL.D.

The case of Major Murray, who appealed successfully to the London Sessions from the sentence of the magistrate at the Marlborough Street Police Court, imposing a fine of 40s., and five guineas costs, is of more than passing interest. No one would deny that a person who is drunk and disorderly is a proper subject for punishment; and most people consider that the penalty usually imposed for this offence is too light. It would seem reasonable that drunkenness in a public place should be made an offence, in itself, whether or not it is accompanied by disorderly conduct. So also, all will agree that it is of supreme importance to make the streets safe for women from any kind of molestation. It is obvious, however, that regulations of this nature may easily become oppressive, unless administered with great care and discretion. Not only is the line between intoxication and freedom from it difficult to draw, but a person who is completely sober but excited, may be mistakenly supposed to be under the influence of drink.

Major Murray's case appears to be one in which grave injustice was avoided by the decision given on the appeal from the police court. The serious part of the charge was that of molesting certain ladies by peering into their faces and accosting them. The case against the accused on this point rested on the statements made by police-constable Thurston; whose evidence consisted in part of hearsay—namely, of what some young woman said to him—and in part of what he himself saw, or thought he saw. As regards the young woman who spoke to Thurston, she did not give (nor was she asked) her name and address; but, according to his statement, she said that she would go to Vine Street—which, however, she did not do. Thurston further stated in his evidence that after the young woman had spoken to him she went away; that he then "kept Major Murray under observation," and saw him go up to a young woman, "say something to her and she walked away," and that he then saw Major Murray go up to another young woman, "peer into her face and say something to her, after which she walked away quickly." Thurston then went up to Major Murray and "told him he was drunk and that he would take him into custody for being drunk and disorderly and molesting women."

This being the only evidence of molesting, it is material to observe that on the occasion in question, Thurston, according to his own evidence, was "*on traffic duty outside Devonshire House.*" Most people might think that a police constable on traffic duty in such a position would be far too busy to be certain of exactly what was said to him by a young woman on a subject wholly unconnected with the traffic, or of what man, if any, she was making a complaint. It would seem hardly possible that Thurston, from his station in Piccadilly, and with his overwhelming traffic duties to attend to, could have kept Major Murray under such close observation as to be able to see—especially in the dusk of the evening, it being about 8.45 p.m.—whether Major Murray, spoke to, or peered into the face of some young woman in the street, or whether any one to whom Major Murray was supposed to have spoken moved away in resentment.

In opposition to the very inconclusive evidence of the traffic constable, there was the direct and absolute denial of the accused, whose evidence was in no degree shaken on cross-examination.

Treating the evidence of molesting as having broken down, there would appear to have been an end of the case. Apart from molesting, there was no evidence of disorderly conduct, and drunkenness in itself is not an offence. The question of drunkenness was gone into, since, if proved, it might have given some support to the charge of molesting; but this accusation also entirely broke down. Thurston, after the young woman had (whilst he was on traffic duty) spoken to him, and after what he thought he had observed Major Murray do, seems to have somewhat hastily assumed that Major Murray was drunk. In consequence of this assumption Major Murray was subjected to the indignity of being "held by the arm," and in this custody walked off to Vine Street.

The Inspector at Vine Street stated that the accused was drunk and that "his eyes were bulging"; and the surgeon at the police-station—who appears to have made a very summary examination—"concluded that he was drunk." On the other hand, in addition to the positive evidence of the accused himself, there were other witnesses to his sobriety, some of whom were not called, as the case was stopped by the court. The waiter at the club, who attended on Major Murray and his brother-in-law before they left the club and went down Piccadilly, gave evidence as to what Major Murray had had to drink, and that he was quite sober when he left. Captain Frewen, who was with Major Murray after he left Vine Street and returned to the club, gave evidence of his being so completely sober as to make it impossible that he should have been drunk when at the police-station. It was also in evidence that the accused had written notes on a piece of paper when at the police-station, and that the writing was firm and good. When this writing was put to the police officer in cross-examination, he made the not very sensible observation that "some people write better when they are drunk than when they are sober."

Major Murray bears an excellent character, and he is to be congratulated on having completely cleared his name from the charge thus made against him.

Hire-Purchase Agreements.

LIEN OF THIRD PARTIES.

Interesting and important points of law were recently raised in the Court of Appeal as to the overriding of the rights of an owner of goods, subject to a hire-purchase agreement, by a lien created in favour of third parties, in respect of repairs done to the goods in question: *Albemarle Supply Co., Ltd.*, v. *Hinde & Co.*, 43 T.L.R. 783. In that case the plaintiffs had let three taxicabs to one Botfield on a hire-purchase agreement. One of the clauses in the agreement provided that the hirer should not have or be deemed to have any authority to pledge the credit of the owners for repairs to the vehicles, or to create a lien upon the same in respect of such repairs.

The cabs in question were, with the knowledge of the plaintiffs, garaged at the defendants' garage. The defendants had accounts running with the plaintiffs for garage rent, goods, washing, cleaning and repairs. Payments had been made from time to time by Botfield, but at the material date there was a balance owing to the defendants, a portion of which in any event was in respect of repairs done to the cabs. The plaintiffs subsequently purported to terminate the hire-purchase agreement, inasmuch as Botfield was in arrear with his payments. The defendants however refused to deliver up the cabs, claiming a lien over them in respect of the amounts owing to them for repairs.

Cases on this point are not very numerous, and the earliest (reported) decision thereon appears to be the case of *Keene* v. *Thomas*, 1905, 1 K.B. 136. There the plaintiff had let a dogcart to one Robertson, under a hire-purchase agreement, the agreement providing, *inter alia*, that the hirer was to keep and preserve the dogcart from injury, damage by fire included. Robertson had some necessary repairs executed by the defendant and at that time an instalment was in arrear, the plaintiff however not having terminated the agreement until afterwards. The defendant claimed a lien

thereon, as against the owners, who had terminated the hire-purchase agreement owing to the hirer's default. It was held that the defendant was entitled to this lien on the ground that ROBERTSON was to be regarded as having authority from the owners to have all necessary repairs to the cart executed, the court laying particular stress on the provision in the agreement whereby the hirer undertook to keep and preserve the dogcart from injury. Thus Lord ALVERSTONE, C.J., said in his judgment, *ib.*, at p. 137: "The real question that we have to decide is . . . whether the man who made the bargain with the repairer had authority from the plaintiff to make such bargain . . . The hire-purchase agreement expressly says that R is 'to keep and preserve the said dogcart from injury (damage by fire included)' . . . The clause does give R authority . . . to keep it (the cart) in proper order, and that in my opinion implies an authority on the plaintiff's behalf to get the trap repaired, if it needed repair, as it cannot be contested that R was bound to do the repairs with his own hands. . . . In my opinion, in this case, the hirer of the chattel having undertaken to keep it in repair, and having at any rate a duty to take care of it, and having employed the defendant to repair it, has created a lien in respect of the proper cost of the repairs, not only against himself, but also against the plaintiff, the owner of the trap."

Keene v. *Thomas* was approved and followed in the later case of *Green* v. *All Motors, Ltd.*, 1917, 1 K.B. 625. There a car was let under a hire-purchase agreement, which provided that the hirer should keep the car in good repair and working condition. The hirer took the car which had been damaged in an accident to the defendants for the purpose of being repaired, and it is important to observe that the defendants were all along aware of the fact that the car was subject to a hire-purchase agreement. After the car was sent to the defendants and before the contract for the repairs was made, default was made in payment of an instalment by the hirer. The plaintiff, however, did not terminate the agreement until after the repairs had been commenced, but the defendants refused to deliver the car, claiming a lien thereon for the cost of repairs.

It was held by the Court of Appeal that the defendants were entitled to the lien. It will be observed that there is a material distinction between these two cases; for in *Keene* v. *Thomas*, at the time when the cart was sent for repair, an instalment was in arrear, but the agreement had not been terminated; in *Green* v. *All Motors, Ltd.*, no instalments were in arrear at the time (i.e., when the car was sent to be repaired). Quite apart from the express clauses in these cases enforcing upon the hirer the duty of keeping the chattel in repair, the hirer was to be regarded as having implied authority from the owner to have the car repaired when necessary, and thereby necessarily to create a lien thereon for such repairs. Thus, in his judgment, in *Green* v. *All Motors, Ltd.*, 1917, 1 K.B., at p. 633, SCRUTTON, L.J., said: "The law is clear. The hirer of a chattel is entitled to have it repaired so as to enable him to use it in the way in which such a chattel is ordinarily used. The hirer was therefore entitled, *without any* express authority from the owner, to have the motor car repaired so as to enable him to use it as a motor car is ordinarily used."

The above decisions, therefore, emphasise the importance of including in hire-purchase agreements a clause which prohibits the hirer from pledging the credit of the owners in respect of repairs or creating a lien upon the chattel in respect of any repairs. As the decision of the Court of Appeal in *Albemarle Supply Co., Ltd.*, v. *Hinde*, however, goes to show, even the inclusion of such a clause in the agreement may not prevent third persons from acquiring a lien over the chattel in respect of repairs, since in this case it was held that a lien did in fact exist notwithstanding the provision in the agreement.

This decision is, perhaps, to be explained on the ground that the defendants were not aware of the existence of the above clause, so that the well-known maxim that a principal cannot, as against third persons, limit the ostensible authority of his agent by secret instructions, applied. Thus, the MASTER OF THE ROLLS said, in his judgment, that "the clause in question did not defeat the right of the defendants, which was a right derived, not from BOTFIELD, but against BOTFIELD, upon the execution of the repairs. Such a right could not be defeated by an unknown condition in the agreements between BOTFIELD and the plaintiffs."

Another point was raised, as to whether the defendants had lost their lien owing to the fact that the taxi-cabs were taken out of the garage for use, but this point was decided in favour of the defendants by reason of the fact that the court found that there was an agreement in existence between BOTFIELD and the defendants to the effect that the cabs, if permitted to leave the garage for use, were nevertheless to be regarded as being still "in pawn."

A further point was taken as to whether the defendants had lost their lien by demanding a greater sum than that in respect of which the lien really attached.

In *Scarfe* v. *Morgan*, 1838, 4 M. & W. 270, where a lien was claimed for a charge in respect of which the lien existed, but also for other charges in respect of which no lien could rightly be claimed, it was held that this did not dispense with the necessity of tendering the correct sum in respect of which the lien existed, PARKE, B., being of opinion that the lien would only be waived if it were shown that the bailee had agreed to waive the lien, or that he had agreed to waive the necessity of a tender of the minor sum claimed to be due. Again, ALDERSON, B., said (*ib.*, at p. 282): "It seems to me that you cannot say that because the party claims more than it may be ultimately found he had a right to, he would not have a right to a tender of the sum which the other ought to pay." It would be otherwise, however, if the owner or other person claiming the return of the goods intimated to the other that he was willing to pay the proper proportion of the amount claimed by the bailee in respect of which the lien rightly exists; in such a case the lien would be destroyed if the bailee refused to deliver, and *à fortiori*, this result would ensue where a tender of the proper amount was made: *Dirks* v. *Richards*, 1842, 4 M. & G. 574.

The following propositions of law are therefore to be derived from the above cases:—

(1) Goods which are let out on hire-purchase may be subject to a lien in favour of a person who at the request of the hirer executes repairs thereto; and such a lien will not be prevented from arising by reason of the fact that the hire-purchase agreement contains a clause forbidding the hirer to pledge the owner's credit, or to create any lien on the goods in respect of repairs. While such a clause may be effective as between the owner and the hirer, it cannot affect third parties, unless the third party is aware of its existence.

(2) The fact that physical possession is parted with of goods over which a lien exists will not necessarily destroy a lien so long as the right to the lien is clearly retained.

(3) The fact that a demand is made for a greater sum than that in respect of which the lien properly attaches will not destroy the lien. Where, however, a tender is made of the proper amount, or even where an intimation is made of willingness to pay the charge in respect of which the lien properly attaches, but delivery of the goods is notwithstanding refused, the lien will have been deemed to have been waived.

Sewers and Drains.

By ALEXANDER MACMORRAN, M.A., K.C.

(*Continued from page* 721.)

II.

It has already been pointed out that, speaking generally, a drain, properly so called, has to be repaired and maintained by the owner of the premises in which it happens to be, while a sewer, as defined by the Act, is vested in the local authority and repairable by them. *Primâ facie*, a channel which receives the drainage of two or more buildings is a sewer, but cases have arisen in which there has been a question whether the connection of a second house has been made lawfully or not. In the case of *Bateman* v. *Poplar District Board*, 37 Ch. D. 272, North, J., said:—"I am not at present prepared to hold that the unlawful act of a stranger, done without the consent of the owner of adjoining premises, could affect his ownership of the drain or the liability of the district board by vesting the drain in them and thus throwing the responsibility for it upon them, or even that if the connection was made by permission of the adjoining owner or of his tenant, the responsibility of the board could be affected without their consent." The difficulty thus indicated has been the subject of much litigation. In a case which has been already mentioned in these notes on another point—*Hedley* v. *Webb*, 1901, 2 Ch. 126—Cozens-Hardy, J., said:—"Can a man, in making a sewer or continuing a sewer, carry it through a neighbour's land wrongfully, and, without the consent of that owner, make it a sewer so as to vest the property in the local authority and so constitute it a public sewer within the meaning of the Public Health Act?" And, later on, in his judgment, he said:—"I do not think that he could, by a wrongful act, by a trespass on the land of someone else, make that portion of the drain which runs through that other person's land a sewer within the meaning of the Act." In a later case, *Pakenham* v. *Ticehurst R.D.C.*, 67 J.P. 448, Buckley, J., after referring to *Hedley* v. *Webb*, as having decided that if, by way of trespass, a sewer has been laid down on any land without the knowledge of the landowner it is competent for the landowner, when he finds out, to say: "This was wrongful against me, this is not a sewer at all because it was put on my land by way of trespass against me, and it must be taken away," went on to say:—"I cannot see that he can say that both as against the person who laid it and as against the local authority, but if, in point of fact, a system of pipes has been laid by one man in the land of another so as to constitute a sewer with the consent of the latter, or if it has been laid without his consent and subsequently he finds out it has been done and says 'I do consent; I do not complain of the trespass; I am quite content,' then it seems to me that a sewer will have been constituted, and as such the same will vest in the local authority."

An instructive case on this branch of the subject is that of *Kershaw* v. *Taylor*, 1895, 2 Q.B. 471. In that case a builder built four houses which he, contrary to the directions of the sanitary authority, caused to be drained into one drain. He subsequently sold the houses to different purchasers. In a proceeding to compel the purchaser of the premises in which the drain which so received the drainage of the four houses was situated to repair such drain for the purpose of remedying a nuisance caused by its defective condition, it was held by the Court of Appeal that the purchaser was not estopped by the wrongful act of his predecessor in title from alleging that the drain in question was a sewer, and that the duty of repairing it consequently lay, not on him, but on the sanitary authority. In the course of his judgment in that case, Kay, L.J., said:—"An attempt is made to get behind this conclusion by saying that the houses have been drained without the knowledge of the local authority, who ought, therefore, to be entitled to say that the drainage is not by a sewer but by a drain. The question however is, *rebus sic stantibus*, is this a drain or a sewer? And want of knowledge on the part of the local authority is no answer to the assertion of the respondent that he is not liable for anything but a drain. The conversion of what would have been a drain into a sewer was not by any act of the respondent, and there is no estoppel against him." In yet another case—*St. Matthew, Bethnal Green (Vestry of)* v. *London School Board*, 1898, A.C. 190—it was held that a pipe was a sewer vested in the local authority, although in the metropolis a sewer could not lawfully be laid without the sanction of the Metropolitan Board of Works, and there was no evidence that such sanction had been given. In the course of his judgment, Lord Herschell summed up the law in this way. He said:—"In the language of this legislation I think it is none the less a sewer within the meaning of the Act, even though that sewer may have come into existence without the assent or approval which, as between public bodies, the statute requires."

From these and similar cases it may be possible to deduce a general proposition, namely, that, *prima facie*, a pipe receiving the drainage of two houses is a sewer, but if the connexion with a second house has been wrongfully made the representatives of the original wrongdoer, not being purchasers for value without notice, are estopped, as against the local authority, from alleging that the drain in question is a sewer. One of the latest cases on this subject seems to bear out the proposition thus stated (see *Heaver* v. *Fulham Borough Council*, 1904, 2 K.B. 383).

At this point it may be useful to refer to the case of *Butt* v. *Snow*, 67 J.P. 454. In that case a cesspool was built by the appellant on land of which the appellant was lessee in possession for the residue of an unexpired term of years. The cesspool formed the ultimate outfall of a drainage system consisting of a pipe along and under a street, into which pipe the drainage of houses on each side of the street was discharged by separate drains. The appellant was owner of six of these houses. The drainage system had been constructed by the appellant in accordance with plans approved by the corporation on the appellant undertaking, *inter alia*, that the pipe should be a private drain and that he would repair and cleanse both pipe and cesspool. On a summons against the appellant under the nuisance clauses of the Public Health Act, 1875, for not abating a nuisance arising from the cesspool, the justices fined the appellant as the person by whose act, default or sufferance the nuisance complained of arose. It was held by Mr. Justice Channell that the decision of the justices was right, and that where a man chooses to deal with drainage which passes through a pipe into a cesspool on his own land, and he fails to cleanse the cesspool, although the pipe may receive the drainage of more than one house the obligation to cleanse the cesspool is upon him and not upon the local authority, and therefore that even if the pipe and cesspool had vested in the local authority, as between the local authority and third parties, the liability to cleanse lay on the appellant by virtue of his undertaking. It will be observed that the agreement in that case was held to be valid and binding only as between the local authority and the person who made the agreement. The pipe in question would in all probability be held to be a sewer as between the local authority and third persons.

Reference must now be made to the later legislation which has to some extent modified the definition of the expressions "drain" and "sewer." The Public Health Act, 1890, is, no doubt, an adoptive Act, but it has been adopted in nearly all cases by local authorities, and it may be regarded therefore as altering the general law. Section 19 of that Act provides that where two or more houses belonging to different owners are connected with a public sewer by a single private drain an application may be made under s. 41 of the Public Health Act, 1875 (relating to complaints as to nuisances from drains), and the local authority may recover any expenses incurred by them in executing any works under the powers conferred on

them by that section from the owners of the houses in such shares and proportions as shall be settled by a court of summary jurisdiction. In order fully to understand the effect of this enactment reference must be made to s. 41 of the Public Health Act, 1875, which is referred to in the section. It provides in effect that on the written application of any person to a local authority stating that any drain is a nuisance or injurious to health, the local authority may empower their surveyor or inspector of nuisances to enter such premises and examine such drain. If it is found to be in proper condition he must cause the ground to be closed, and any damage made good. But if the drain, on examination, appears to be in bad condition or to require alteration or amendment, the local authority are to give notice to the owner or occupier of the premises requiring him to do the necessary works, and if such notice is not complied with the person to whom it is given is liable to a penalty and the local authority may execute the works and recover the expense from him. Section 41, which has been quoted at length, applied, in the first instance, only to a drain as defined by the Public Health Act, 1875, s. 4. The new enactment in the Act of 1890 extends the definition of a drain to a case where two or more houses belonging to different owners are connected with a public sewer by a single private drain. There seems to be no reason why the section should have applied only in the case of houses belonging to different owners, and in many cases where local authorities obtained private acts the section was made to apply to two or more houses either belonging to the same or to different owners. But the section is somewhat difficult to construe, for under the Public Health Act the drain of two or more houses is itself a public sewer, and the section under consideration seems to assume that such is not the case. Moreover, there is no definition of the expression "single private drain." The courts have been called upon, however, to construe the section and it may be said that the section applies where the drainage of two or more houses is carried to a sewer by means of a common drain laid in private land. The leading case on the subject is that of *Bradford* v. *The Mayor of Eastbourne*, 1896, 2 Q.B. 205. In that case a drain pipe passing through private property had, from a date prior to 1890, received the drainage of several houses belonging to different owners before it joined the public sewer. The pipe having become a nuisance, the local authority gave notice to the owners of the houses to repair it, and on the failure of the owners to comply with the notice the local authority executed the necessary work themselves and claimed to recover from the owners the expenses incurred by them in so doing. It was held that the pipe in question was a single private drain within the meaning of s. 19 of the Act under consideration, and that the local authority were entitled to recover. In the course of his judgment, Lord RUSSELL, C.J., said: "What is a private drain, and can there be a private drain connecting two or more houses belonging to different owners with a public sewer? Prior to the passing of the Act of 1890, by the operation of the Act of 1875, and, indeed, by the operation of the prior Act of 1848, there could not be a private drain which connected two or more houses belonging to different owners with a public sewer because any such drain was a sewer and was a sewer vested in the local authority. Therefore it might be said that the drain in this case is not a private drain because it was vested in the local authority—if the word 'private' is to be taken as used in the sense of belonging to an individual. But the Act of 1890 for the purposes of s. 19, and for those purposes only, widens the definition of 'drain' contained in s. 4 of the Act of 1875. And therefore there seems to be no difficulty in interpreting s. 19 with regard to the word 'drain.'" And in the same case, WILLS, J., said: "The public sewer is obviously meant here to indicate the sewer which serves the public generally, and has or may have an indefinite number of houses connected with it either directly or because branch sewers come into it; whereas the private drain serving two or more houses is that of which the natural use is confined to those houses, and with which other houses belonging to other owners could not be connected without the consent of such persons through whose land it runs. The provision so understood does not seem unreasonable." This decision was followed in *Seal* v. *Merthyr Tydfil U.D.C.*, 1897, 2 Q.B. 543, and indeed it has been acted upon in many cases of later date.

The consideration of s. 19 of the Act of 1890 would be incomplete without a reference to the case of *Wood Green U.D.C.* v. *Joseph*, 1908, A.C. 419. In the course of his judgment Lord ATKINSON said: "Whether the owner of two or more houses, in discharge of his obligation under ss. 23 and 25 of the statute, caused the drainage from each to be carried in a separate and independent drain into 'the sewer which the local authority was entitled to use,' or to the cesspool they designated for it, or laid their drains so as to unite, and thereby caused the drainage from several houses to be carried by one conduit from the point of junction to the same sewer or cesspool, was a matter of indifference so long as the drainage was efficient. This conduit, which may be referred to as the 'common conduit,' would, according to the ordinary meaning of language, be a 'drain'; it would be 'single,' would be 'private,' would probably be constituted, in whole or in part, 'on the premises' of the person who constructed it, and even if not, having been made by him to carry off the drainage of his own house would 'belong' to his premises, and he would be obliged to keep it in good order."

It must be borne in mind, however, that a drain receiving the drainage of two or more houses is still a sewer as defined by the Public Health Act, 1875, and the effect of s. 19 of the Act of 1890 was thus stated by WARRINGTON, J., in *Pemsel* v. *Tucker*, 1907, 2 Ch. 203. He said: "I fail to see how that section (that is s. 19 of the Act of 1890) interferes with or modifies the vesting section of the Public Health Act, 1875. All that it does is to bring under the operation of s. 41, which is confined to nuisances, what is called a private drain (an expression which is used in the Act of 1890 for the first time), taking the drainage of two or more houses belonging to different owners. But I cannot see how that divests that which under the Public Health Act is a sewer from the local authority." The reference to the vesting of a sewer will be dealt with later in these notes, but in the case just cited, the learned judge, referring to the word "vest," said: "It seems to me that it only means this—the duty of the local authority of providing against and abating a nuisance in a sewer is shifted to some extent by the Act of 1890, and thrown upon the owner and to that extent the rights of the local authority and the ownership of the local authority in respect of the sewer are shifted from it to the individual owner; but it in no way affects those other obligations and those other powers of the local authority which I have already referred to, and which are quite independent of the existence or non-existence of a nuisance in the drain in question." And further on he added: "Nor is there any difficulty when one looks into it in saying that a sewer may still be vested in the local authority for all the purposes which are expressed in s. 13, and the following sections of the Act of 1875, and yet the private owner may, for the purposes of abating a nuisance, be under the obligations which are imposed upon him by s. 19 of the Act of 1890 and s. 41 of the Act of 1875."

Before leaving this branch of the subject, reference may be made to the decision of the Court of Appeal in a recent case: *Kingston-upon-Hull Corporation* v. *North Eastern Rly. Co.*, 1916, 1 Ch. 31. The facts of the case were as follows: The defendants, the railway company, were the owners of a plot of land which abutted on a road in which was laid a public sewer. The defendants had erected on this plot of land two rows of cottages with a road about twenty feet wide between them. The road was a cul-de-sac, and formed the only access

by road and for vehicles to the back-yards of the cottages. The entrance to the road was originally closed by gates, but these had been removed so that any member of the public might use the road, but it had never been repaired, cleansed or lighted at the public expense. In 1877 the defendants laid a line of pipes in the centre of the road to take the drainage of the cottages, which were connected with it in pairs by means of Y-shaped pipes, into the public sewer in the road. The defendants subsequently constructed gulleys and pipes to take away the surface water in the cul-de-sac road. It was held that whether the cul-de-sac was a highway or not, the line of pipes in the road was a single private drain which the defendants were liable to repair. The substance of the decision may be conveyed by one short quotation from the judgment of BANKES, L.J., who said: "The line of pipes fulfils all the essentials of such a drain in that it is single, is private, it is connected with two or more houses or premises all belonging to the North-Eastern Railway Company,, and it does convey their drainage into a public sewer. The point was made that this line of pipes could not be a single private drain because it received the surface water from the roadway as well as the drainage from the houses. If my interpretation of the expression "premises" is correct, it is an answer to this point. But apart from that I do not see why the introduction of other matter into a line of pipes in addition to the drainage from the houses in question should make any difference,, unless the matter introduced is of such a character as to destroy the private nature of the drain." It should perhaps be mentioned, to avoid misapprehension, that in the case just mentioned there was a local Act which extended the definition of a drain to one which takes the drainage of more than one building, whether belonging to the same or to different owners.

(To be continued.)

A Conveyancer's Diary.

Endorsements on Pre-1926 Assents and Conveyances: Ad. of E.A., 1925, s. 36 (5), (12).

It is provided by the Ad. of E.A., 1925, s. 36 (5) that any person in whose favour an assent or conveyance of a legal estate is made by a personal representative may require that notice of the assent or conveyance be written or endorsed on or permanently annexed to the probate or letters of administration.

Sub-section (12) of the same section declares that the whole of s. 36 "applies to assents and conveyances made after the commencement of this Act whether the testator or intestate died before or after such commencement."

It seems, therefore (see the words "is made" referring to assents under the section), that sub-s. (5) does not enable a person in whose favour an assent or conveyance was made before 1926 to require notice of such assent or conveyance to be endorsed or annexed: cf. 2 Wolst. & Cherry, 11th ed., pp. 535, 784. The observations made below, however, on the construction of sub-s. (6) suggest that sub-s. (5) may be capable of a wider construction, under which a person in whose favour an assent or conveyance of a legal estate has been made before 1926, may, after 1925, be entitled to have notice of the assent placed on or annexed to the probate. Having regard to the effect of sub-s. (6), mentioned below, this wider construction would probably be the more convenient, so as to enable such persons to be protected against a subsequent conveyance by a personal representative. It is impracticable to suggest that personal representatives should in all cases be bound to annex a list of their pre-1926 assents or conveyances. There would, however, be no objection to the representatives endorsing a notice of a pre-1926 assent or conveyance at the request of a voluntary grantee.

Statements that no Assent has been made: Ad. of E.A., 1925, s. 36 (6), (12).

Again, sub-s. (6) of s. 36 provides, by its first paragraph, that a statement in writing by a personal representative that he has not given or made an assent or conveyance in respect of a legal estate is to be, in favour of a purchaser, sufficient evidence that a previous assent or conveyance has not been made, unless notice of such a previous assent or conveyance has been placed on or annexed to the probate or letters of administration. This is to be without prejudice to any previous disposition (which term includes a conveyance whenever made) made in favour of another purchaser deriving title mediately or immediately under the personal representative.

The sub-section provides, by its second paragraph, that a conveyance by a personal representative of a legal estate to a purchaser, accepted on the faith of such a statement, is to operate (without prejudice as aforesaid and unless notice of a previous assent or conveyance has been placed or annexed) to transfer or create the legal estate expressed to be conveyed in like manner as if *no previous* assent or conveyance had been made by the personal representative.

At first sight, if these provisions are read in their ordinary and natural sense (according to the usual rule in the construction not only of statutes but of all documents) and without any supposed restriction, but as extended by sub-s. (12) to transactions after 1925 affecting the estates of persons dying before 1926, they appear to be intended to enable purchasers from a personal representative to be protected from the danger of any previous assent or conveyance by the personal representative, whether before or after the Act, except in the cases particularly mentioned. On this view the rights of the pre-1926 grantee, except in those cases, are over-reached, and shifted to the purchase money.

It has been suggested, however, that sub-s. (6) should be construed as follows: A statement in writing made by a personal representative after 1925 that he has not given or made an assent or conveyance [after 1925] shall . . . be sufficient evidence that an assent or conveyance has not been given or made after 1925; and a conveyance made *after* 1925 by a personal representative accepted on the faith of such a statement is to operate to transfer or create the legal estate in like manner as if no previous assent or conveyance had been made *after* 1925 by the personal representative.

Such a construction would unnecessarily narrow the beneficent operation of the first paragraph of sub-s. (6); for where the death occurred before 1926, the written statement (either express, or implied by assenting "As Personal Representative," in this case applicable only to his own assents) would only be sufficient evidence as to the absence of any assent made after 1925, and would be valueless as to the period between the death and 1st January, 1926. The protection afforded by the sub-section, however, is wanted, if at all, as to transactions since the death and not merely since the 1st January, 1926. Whether or not an assent had been made before 1926 would have to be ascertained according to the old unsatisfactory practice. Moreover, having regard to the words "as if *no previous* assent or conveyance had been made," in the second paragraph of the section, the restricted construction would render that second paragraph an absurdity. For if an assent in respect of the legal estate had been made before 1926, without any notice being endorsed, then under the restricted construction a conveyance after 1925 would not over-reach this assent; and accordingly could not operate to transfer or create any legal estate at all; this would be contrary to the sub-section.

The restricted construction amounts to construing sub-s. (12) as a definition clause, having a paramount effect restricting the meaning of the words "assent" and "conveyance" wherever they occur in the section. It is to be observed, however, that

sub-s. (12) does not purport to define those expressions, and is framed in quite a different manner from the definition section (s. 55). In particular, there is no saving for a contrary context. The words "applies to" are not the same as "means."

Had sub-s. (12) not been enacted, the section would in any case have operated only on the construction of conveyances and assents made after 1925; but references to "previous" conveyances would necessarily have applied to conveyances whenever made. Thus if sub-s. (12) is restrictive, it is surplusage as respects the construction of conveyances made after 1925, but forces an unnatural meaning to be attributed to "previous" conveyances.

The result of these considerations is that sub-s. (12) cannot be read as restrictive; but that it is merely extensive and retrospective, making it clear that a personal representative constituted before 1926 can, after 1925, exercise the powers conferred by the section, see 2 Wolst. & Cherry, p. 539. The result is, further, that the expressions "assent" and "conveyance" throughout the section only have the restricted meaning "assents made after 1925" and "conveyances made after 1925" where any operative effect is given by the section to the assent or conveyance itself. As in the first paragraph of sub-s. (6) the operative effect is given only to the written statement made after 1925, the expressions "assent" and "conveyance" are used generally and without restriction as to the time when they were made. In the second paragraph operative effect is given to a "conveyance" by a personal representative. A "conveyance" in that case would clearly mean a conveyance made after 1925.

It may perhaps be alleged that this construction results or may result in two meanings being given to the same expressions in one and the same sub-section. The allegation applies only to the restricted construction, however; for it makes a distinction as respects the "previous" assents and conveyances between those made before 1926 and those made after 1925. This distinction disappears for the purposes of sub-s. (6) under the more natural construction above mentioned.

The general purpose and scheme of the new legislation again are in favour of the more liberal view. The curtain is more complete, the making of title is greatly facilitated, purchasers are (without prejudice to prior purchasers) better protected, if the written statements of personal representatives are sufficient evidence of no previous assents having been made at any time whether before or after the commencement of the Ad. of E.A., 1925.

It may be of interest to indicate that the opinion given in our Points in Practice columns (see e.g., p. 662, *Q.* 904) is that the written statements are sufficient evidence of the absence of assent made at any time.

Landlord and Tenant Notebook.

Estoppel as between Landlord and Tenant—*continued from p.* 722.

From the cases dealt with in our last issue, it will have been observed that the application of the doctrine of estoppel as between landlord and tenant rests to a large extent on the fact that the lessee or his predecessor in title has received possession of the premises from the plaintiff himself.

What is the position, therefore, where the interest of the original lessor from whom possession was received has passed to a third person?

In such a case there is clearly no estoppel unless there is some act on the part of the tenant acknowledging the title of the new landlord. Such acknowledgment is generally brought about by payment of rent by the tenant to the new landlord, but it is not conclusive. Thus, in *Jew* v. *Wood*, 1841, Cr. & Ph., at p. 195, the Lord Chancellor said: "It appears to me that by the uniform current of all the cases (for there is not that discrepancy between the cases which was suggested), that the rule of law is that, after the death of a person to whom the occupier became tenant, the tenant may require the person claiming under the original lessor to prove his title under such original lessor, and that, although the tenant has paid rent to the person so claiming under the original lessor, he is not precluded from so doing by the payment of rent, and other acts which might under other circumstances amount to an attornment."

Such payment of rent (i.e., by the tenant to a person by whom he has *not* been let into possession) does not amount to an estoppel, but is simply in the nature of an admission which might be explained: see per Stirling, L.J., in *Sergeant* v. *Nash, Field & Co.*, 1903, 2 K.B., at p. 315. Thus the tenant may allege misrepresentation on the part of his new "landlord," or ignorance on his own part of the true state of the title.

It seems that where there is an eviction by title paramount, the estoppel comes to an end. Thus, in *Delaney* v. *Fox*, 1857, 2 C.B., at p. 775, Cockburn, C.J., said: "It is true that, though the tenant is estopped from denying that his landlord ever had title, it is nevertheless competent to him to show that his title is determined; and that he may do in many ways, amongst others, by showing an eviction actual or constructive—as is said in the case: *The Mayor of Poole* v. *Whitt*, 15 M. & W. 571. . . . But it is plain that to admit evidence of a constructive eviction might operate seriously to the injury of the landlord; for he might be deprived of an advantage which the law gives him, by his tenant's agreeing to attorn to another upon a mere threat of an ejectment."

The above would appear to be the chief exceptions to the rule that a tenant is estopped from disputing his landlord's title. Before concluding, however, it may be as well to examine the duration of such estoppel.

It would appear that the estoppel continues as long as the interest created by the lease is in force, but on the termination of such interest, the estoppel automatically ceases.

Reference on this point may be made to the *dicta* of Lord Blackburn in *Clark* v. *Adie*, 1877, 2 A.C., at p. 435, which case, however, concerned a patent. In comparing the position of a licensee under a patent with that of a tenant, Lord Blackburn said: "*So long as the lease remains in force, and the tenant has not been evicted by title paramount*, he is estopped from denying that his lessor had a title to that land. When the lease is at end, the man who was formerly the tenant, but has now ceased to be so, may show that it was altogether a mistake to have taken the lease, and that the land really belonged to him; but during the continuance of the lease he cannot show anything of the sort; it must be taken as against him that the lessor had a title to the land." So that, even if the tenant has a better title in the premises than his own lessor, he will apparently be estopped from disputing his lessor's title while the interest created by the lease remains in force. (But see *Doe* v. *Oliver, Powell*, 1 A. & E. 531.)

Books Received.

Poor Law Act, 1927, *with an Introduction explaining the Scope of the Act, an Annotated Index, etc.* John Moss. Medium 8vo. pp. xxix and 304. Butterworth & Co. 7s. 6d. net.

Annual Local Taxation Returns, 1924-25. *Comparative Local Financial Statistics up to 31st March*, 1925. Part II. pp. x and 213. 1927. H.M. Stationery Office. 15s. net.

Eighth Annual Report of the Ministry of Health. 1926-1927. Cmd. 2938. 1927. pp. xxxii and 284. H.M. Stationery Office. 4s. net.

Apportionment Tables for the Use of Solicitors, Accountants, &c. H. Bolton. Medium 8vo. 1927. Stevens & Sons, Ltd. £1 5s. net.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of paper only, and be in triplicate. Each copy to contain the name and address of the subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

ENFRANCHISED LAND—AGREEMENT FOR SALE—WHETHER VENDOR CAN SUBSEQUENTLY ENTER INTO COMPENSATION AGREEMENT.

958. *Q.* A enters into a contract to sell to B land which was formerly copyhold, and in respect of which the manorial incidents have not yet been extinguished. Subsequent to the execution of the contract, A approaches the lady of the manor as to the terms upon which she will enter into a compensation agreement. It is contended on behalf of the lady of the manor that A, having contracted to sell the property to B is but a trustee of the land for B, and as such is not a person within the meaning of s. 138 (3) of L.P.A., 1922, who can enter into a compensation agreement, and that by reason of the contract for sale the lady of the manor and steward are respectively entitled to their fines and fees which would have been payable if the land had remained copyhold, and that by reason of the contract B must first complete his purchase, and then, if he chooses, he can arrange by way of agreement or under compulsory powers to extinguish the manorial incidents. It is contended that A, who was before the signing of the contract for sale, in a position to extinguish the manorial incidents has by his own acts precluded himself from entering into any agreement with the lady of the manor. We shall be glad to have your views?

A. The opinion is here given that, until actual conveyance, A is "tenant" of the property within s. 189, and entitled to serve a notice within s. 138 (1) (*b*). The lady of the manor is not concerned with the purchaser, and, even if the tenant disclosed his contract of sale under s. 138 (5) (ii), the opinion is also given that he would be the person who had power to enter into the compensation agreement within para. (v), at least until the conveyance had been presented and certified under s. 129 (2), when A's rights would be transferred to B. Assent cannot be given to the propositon that a vendor is simply a trustee for a purchaser from the date of contract, for, until the date of completion, he takes the rents and profits for his own benefit. There is also the possibility that the contract may be rescinded, by mutual consent or otherwise.

SETTLEMENT BY WILL—TRUSTEES FOR THE PURPOSES OF THE S.L.A., 1925, s. 30 (3).

959. *Q.* A, by his will appointed B, C, D and E executors and trustees thereof, and they and the survivors and survivor and the executors or administrators of such survivor and other the trustees or trustee for the time being thereof being thereinafter called "his trustees" and thereby, *inter alia*, devised his residuary real estate to his widow F for life (subject to all mortgages thereon), and after her death devised the same to his two daughters G and H absolutely in equal shares as tenants in common. A died in 1921, and his will was proved by B, C, D and E in May 1922. F now desires to exercise her powers of leasing in respect of a considerable portion of the residuary real estate. She cannot apparently exercise *any* of her powers under the Settled Land Act, 1925, until a vesting deed has been executed. The will contains no present or future power, direction or trust for sale of the real estate, and it would appear therefore that B, C, D and E are not S.L.A. Trustees and cannot execute a vesting deed. What steps are necessary to enable E, the tenant for life, to grant a valid lease of the residuary real estate? Expense is a consideration.

A. B, C, D and E are trustees for the purposes of the S.L.A., 1925, of the settlement created by A's will under s. 30 (3). If the estate was cleared, and F was in possession on 1st January, 1926, assent would be implied under the doctrine of *Wise* v. *Whitburn*, 1924, 1 Ch. 460, and B, C, D and E should execute a vesting deed under the S.L.A., 1925, 2nd Sched., para. 1 (2) otherwise an assent or conveyance under para. 2. When this is done F can exercise all her powers as tenant for life. As an alternative, F, G and H (if the two latter are of age) can appoint trustees for the purposes of the S.L.A., 1925, under s. 30 (1) (v).

MORTGAGE—SALE BY PRIOR MORTGAGEE—REGISTERED PUISNE MORTGAGEE—TITLE.

960. *Q.* Second mortgagees whose interest is in arrear are selling certain property, the first mortgagee joining in the conveyance to release the property on receiving a part of the purchase money. The purchaser's solicitors' search in the Land Registry reveals a third mortgage or charge registered against the owner of the equity. The second mortgage is also registered and takes priority by virtue of its earlier registration. The third mortgagees cannot be persuaded to cancel their charge. The purchaser's solicitors raise the point that this third charge should be cancelled or an undertaking to do so given. In view of s. 88 (1) (*b*) of the L.P.A., 1925, this appears unnecessary and it is contended by me that the registration of the third mortgage is, so far as it relates to the property now being sold, automatically avoided and more or less cancelled. I presume there is no way of effecting a cancellation thereof by the second mortgagees, as the purchaser's solicitors suggest is possible. I shall be obliged for your opinion upon these points.

A. The opinion is here given that ss. 88 and 104 of the L.P.A., 1925 would completely answer any future requisition, after sale by a prior mortgagee under his statutory power, as to the registration of a puisne mortgage against the mortgagor's estate. The mortgagees selling must of course have regard to the third mortgagee's claim in applying the purchase money under s. 105, but, by s. 107 (1), this does not affect the purchase. There is machinery to enter a vacation or cancellation of a registered charge, see L.C.A., 1925, s. 19 (1) (*b*), and L.C. Rules, W.N. 1925, p. 414, r. 10, and forms L.C. 6, and L.C. 8. In the present case, however it is doubtful whether the registration would be altered or cancelled, for neither vendor nor purchaser is concerned with it, and, in the remote chance of rescission of the conveyance, it would not be fair to the third mortgagee.

ENFRANCHISED LAND—DEATH OF COPYHOLDER BEFORE 1926—TRUST FOR SALE—FINES AND FEES.

961. *Q.* A died in June, 1924, seised of certain copyhold property. With regard to the copyholds the will reads as follows: "I devise all my copyhold hereditaments to such uses as my said trustees shall by deed appoint, and in default of and subject to any such appointment to the use of my said trustees their heirs and assigns according to the customs of the manors whereof the said hereditaments may be respectively holden and by and under the accustomed rents and services. And I declare that the aforesaid power of appointment over and devise in default of appointment of my said copyhold hereditaments are respectively given and made upon trust and to the intent that my said trustees shall sell my said copyhold hereditaments and apply the money produced by such sale in the same manner in all respects as if the said hereditaments had been included in the general devise and bequest hereinbefore contained of my real and personal estate in trust for sale and conversion." The trustees have been

trying to sell the property so that under the above clause the fines and fees payable as on the admission of the trustees might be saved. It has been impossible to find a purchaser of the property and the lord of the manor is pressing for the fines and fees payable as on the admission of the trustees, and has threatened to issue a writ unless the amount is paid at once. Under the old law, of course, if the fines, etc., had not been paid, the lord would have held courts, made the usual proclamations, and seized the property until someone claimed admission. What is the position under the new law? Can the trustees refuse to pay the fines and fees and leave the matter open until a purchaser can be found, so that the liability can be passed on to the purchaser, or is the lord within his rights in taking proceedings at once to compel payment of the amount claimed for fines and fees?

A. This was a case where there was no copyholder in fee on the rolls on 31st December, 1925, and, applying the L.P.A., 1922, 12th Sched, para. (8) (*b*) as amended by the L.P. (Am.)A., 1924, s. 2 and 2nd Sched., para. 4 (1), the trustees having the best right to be admitted as copyholders, the property vested in them subject to the payment of fines and fees; see also 12th Sched. para. (8) prov. (v). This being so, there appears to be no answer to the claim of the lord, who may recover the money due to him as a simple contract debt under the L.P.A., 1922, s. 130 (5).

UNDIVIDED SHARES—VESTING—APPOINTMENT OF NEW TRUSTEE TO REPLACE PUBLIC TRUSTEE.

962. *Q.* By an assignment dated 5th December, 1898, certain leasehold property was assigned to T.H. and A.R. as tenants in common. T.H. died on the 14th February, 1907, having by his will left his residuary estate (which included the leasehold property) to the said A.R. and A.D., who died on the 25th August, 1926, leaving the said A.R. the sole surviving executor and trustee. The trusts of T.H.'s residuary estate are for his two sisters (who are both living) for their respective lives. What is the effect of the L.P.A.? On the 1st January, 1926, A.R. was absolute owner of one-half of the property and jointly with A.D. was trustee of the other half. Did the property vest in the Public Trustee, seeing that one-half of the property was settled by the Will of T.H., or is the property still vested in A.R., as to one-half absolutely in his own right, and as to the other half as trustee? If the latter view is correct, then it will be necessary to appoint a new trustee in order that a valid receipt can be given for the purchase-money. If the former view is correct, is there any objection to A.R. appointing the two tenants for life as new trustees jointly with himself in place of the Public Trustee? In either case is there any objection to the appointment of new trustee being carried out in the assignment of the property to the purchaser?

A. Immediately before the 1st January, 1926, the land was held in equity in undivided shares vested in possession, one share being held by A.R. and the other for the two sisters of T.H. Hence Pt. IV of the 1st Sched. to L.P.A., 1925, became applicable. As sub-paras. (1), (2) and (3) of para. 1 were inapplicable, sub-para. (4) applied to vest the land in the Public Trustee upon the statutory trusts. There is no objection to the appointment of the two tenants for life of the income and A.R.; and A.R. can make the appointment as a person interested in more than an undivided half of the land. The appointment should be made by a separate deed, which will only bear a 10s. stamp. The land will vest by virtue of the L.P.A., 1925, in the new trustees; see L.P. (Amend.) A., 1926, Sched., amending L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4) (iii).

APPOINTMENT OF TRUSTEES UNDER THE A.E.A., 1925, S. 42—PROCEDURE.

963. *Q.* By her will testatrix, who died in December last, and whose will has since been proved, gave two pecuniary legacies to A.B. and C.D. (brother and sister), who are both infants. The executors desire to appoint the mother and surviving parent of the children and a friend to be trustees of both legacies in accordance with s. 42 of the A.E.A., 1925, and so obtain their discharge from any further liability in respect thereof. There are no trustee investments forming part of the assets of the deceased's estate available for appropriation and transfer into the names of the proposed trustees in satisfaction of the legacies. Attention is drawn to the precedent in "Prideaux," vol. III, p. 476, where the legacy is satisfied by the appropriation and transfer of investments with the consent of the trustees. The question arises as to whether—

(*a*) The trustees should be appointed trustees of the actual cash representing the legacies (after payment of duties, the legacies not having been given "free of duty").

(*b*) The money in the hands of the executors should be invested in trustee investments in the names of the proposed trustees and with their consent before the deed of appointment is executed and the trustees subsequently appointed trustees of the investments. In this case particulars of the investments would be set out in schedule to the deed of appointment.

In either of the cases (*a*) and (*b*), there being two separate trusts for each infant, should the appointment be carried out by a single deed or by a separate deed for each trust? It is assumed that, if effected by a single deed, such deed would attract double stamp duty, there being two separate trusts, and little expense would be saved. It would appear, if there is no serious objection, that the course indicated in (*b*) above, carried out by two separate deeds, may be the more convenient, but I shall be glad to have your opinion as to the points raised.

A. As a practical matter either alternative suggested would be in order, though for the executors to place investments in the names of persons not at the time appointed trustees would be a technical breach of trust—one, however, very frequently committed if the proposed trustees have informally agreed to accept office. There would be a little saving on the alternative (*b*), in avoiding the double transfer. It is agreed that a separate deed for each trust would be the more convenient. The precedent in "Prideaux" quoted would be applicable with a slight alteration of the third recital, in view of the fact that s. 41 of the Act would not have been invoked. The recital should be to the effect that the executors had set aside the money after payment of duties, and, as trustees, had invested it.

SOLICITOR'S COSTS—LEASE PARTLY IN CONSIDERATION OF PREMIUM.

964. *Q.* A lease for ninety-nine years is granted by A to B. The ground rent is £10 10s. per annum and the premium paid is £1,100. What costs can a solicitor charge as against the lessee?

A. By the Solicitors' Remuneration Order, 1882, Rules applicable to Pt. II of Sched. I, r. 5, the remuneration will be in respect of a lease at £10 10s. and of a purchase for £1,100. The lessor's solicitor can charge this against the lessee unless the local custom forbids, see "Law Practice and Usage, etc." case 901, p. 234.

LANDLORD AND TENANT—LEASE—NEW DEMISE TO LESSEE'S HUSBAND—NO SURRENDER OF EXISTING LEASE—LIABILITY UNDER SECOND DEMISE.

965. *Q.* In August, 1925, A.G. (a widow) agreed with A.B. (the owner) to rent a dwelling-house from 1st September, 1925, until 1st April, 1929, at a yearly rental of £100 per annum. A.B. prepared two documents: (*a*) a tenancy agreement whereby he let the premises to A.G. from 1st September, 1925, to 1st April, 1926; (*b*) a lease whereby he demised the property to A.G. for three years from 1st April, 1926. The lease is the usual form of lease of a dwelling-house. A.G. duly went into occupation of the premises with her family. On 6th January, 1926, she married C.W., who did not take up his

residence with her at the house. He occasionally visited his wife and stayed the night, but his residence continued to be the same as before the marriage, i.e., with a relative some seven or eight miles away. On the landlord hearing of the marriage, he came to the house, saw the husband, and said that as he had now married A.G. the house ought to be put into his name. He therefore prepared, and a few days after produced, a new form of lease. C.W., who is not a business man, was induced to sign the document on being informed that it was the proper thing to do. The document is in identical terms with the existing lease. It purports to similarly demise the premises to the husband for three years from 1st April, 1926, at £100 per annum. The rent is payable quarterly, and was paid from time to time, and on two or three occasions the husband made the payment, although, as before stated, he never resided in the house. Early in 1927 the wife found that she could not afford to continue the tenancy, and she therefore vacated the property and returned the key to the landlord, leaving two quarters' rent owing. The landlord has accepted the key without prejudice to his rights, and is now suing the husband, C.W., for the rent owing and for a further sum for dilapidations, alleging a breach of a covenant in the lease to keep the premises in substantial repair. The landlord is suing under the document of 30th January, 1926. Is such document a valid and subsisting lease to the husband, C.W., and is he liable thereunder? There appears to have been no effectual surrender by the wife of the first lease or a vacating of the premises by her in favour of the husband. It would appear from the case of *Wallis* v. *Hands*, 1893, 2 Ch. 75, that the grant of a new lease with the oral assent merely of the person in possession under a subsisting lease does not operate as a surrender in law of the subsisting lease. Is there any other authority on this point, and is there any defence by C.W. to the landlord's claim? Could the landlord argue that C.W., having paid rent, is estopped from denying his liability?

A. This case is one of some difficulty, from the fact that C.W. had, or could have had, quiet enjoyment of the premises as from the date of the demise to him, and therefore cannot allege any breach by the landlord of his implied or express covenant in that behalf. On the other hand, his enjoyment of the premises may be attributed entirely to his wife's possession under her lease, and if in fact she had excluded him, which in certain circumstances she might have had the right to do, see *Shipman* v. *Shipman*, 1924, 2 Ch. 140, the case of *Wallis* v. *Hands*, *supra*, is authority that her lease was still subsisting, and the landlord could not have given him relief. On the case put, the wife's departure from the premises in 1927 was in no way referable to the lease to her husband a year before. The payment of rent by the husband was also ambiguous, for he might have paid as agent for his wife, or voluntarily, to free her from liability, or in fulfilment of his common law obligation to maintain her. This ambiguity should preclude the success of a plea of estoppel on behalf of the landlord. On the whole C.W. should succeed on the point that the landlord has never delivered possession to him, having regard to the continued existence of the first lease—and the landlord's acceptance of the key 'without prejudice' might tell unfavourably against him, as indicating that he considered the first lease on foot. It is assumed, however, in the above answer, that there was no evidence of consent by the wife to bring the case within *Walker* v. *Richardson*, 1837, 2 M. & W. 882.

UNDIVIDED SHARES—SALE TO ONE OWNER—PROCEDURE.

966. *Q.* In 1925 freehold land was conveyed to A in fee simple, but the purchase-money was provided by A and B in equal shares, and subsequent to the conveyance A executed a declaration of trust declaring that he held the land in trust for himself and B in equal shares as tenants in common. In 1926, A by deed appointed B to be a trustee of the property with him for the purpose of the S.L.A., 1925, and for all other purposes, and it was declared that A and B should hold the property upon such trusts as might be requisite for giving effect to the rights of A and B under the declaration of trust. A now desires to purchase part of the land for his own use entirely, and has agreed with B that upon payment of a certain sum to B, he, B, shall convey and release his interest in that part of the property to A. How should the transaction be carried out in order that A may get the absolute title in fee simple? Your answer to *Q.* 244 in "Points in Practice" seems to suggest that it could be done by release, but the footnote to a conveyance by one joint tenant to another in the "Encyclopedia of Forms," states that tenants in common cannot release to each other, but should convey in the same way as persons solely seised. Your answer to *Q.* 394 in "Points in Practice," however, suggests that the transaction should be carried out by two documents, namely, first, a conveyance of interest in the proceeds of sale by one to the other, and afterwards a conveyance by the two tenants in common of the land to the purchasing one. If the matter can be carried through by one document that course would be preferable.

A. In the case above, A and B are jointly trustees for sale on the statutory trusts, and, individually, have equitable interests against themselves as trustees. In *Q.* 244, A conveyed not only his equitable but his legal estate, by one deed, and the advice was given that this procedure was effective. The course recommended in the answer to *Q.* 394, however, separately dealing with the legal and equitable estates, is, it is submitted, the better conveyancing. In this case the best plan is for A to purchase B's equitable interest in the property, and for A and B to convey the legal estate therein to A. As this will be a purchase by a trustee from his beneficiary, equitable interests will properly come on to the title, and care must be exercised in drafting the conveyance to show that the parties are operating at arm's length.

COPYHOLDS—LEASE—COPYHOLDER'S INTEREST SUBSEQUENTLY ACQUIRED BY LORD OF MANOR—EFFECT.

967. *Q.* The freehold reversion is vested in the lady of the manor and the residue of a term of ninety-nine years is vested in A, who appears upon the Court Rolls as the admitted tenant for the residue of such term. A wishes to sell the leasehold interest to B, but B will not purchase unless the manorial incidents have been extinguished. A has, therefore, approached the steward with a view to entering into a compensation agreement. In this manor prior to the passing of the Law of Property Acts, the customs would not permit of a termor to enfranchise the property except with the concurrence of the reversioner, and the steward has advised A that the position is still the same. The difficulty in this case is that the reversion is in the lady of the manor. Can the lady of the manor enter into a compensation agreement with herself and with A, and if so, should the compensation money be apportioned, or should it be paid entirely to A? By whom, also, should the costs of the compensation agreement be paid? Ordinarily these are payable by the tenants on the Court Roll, and if a derivative interest has been created, the costs and compensation moneys are apportioned between reversioner and termor. What is the position as to the payment of (1) compensation; (2) costs; when the reversion is in the lady of the manor?

A. If the lord of a manor acquires the interest of a copyholder, the general rule is that the copyhold estate merges, and the land is thenceforth held as freehold: see cases collected Emp. Dig., vol. XIII, pp. 141-2 (and distinguish those where the lord's interest in the manor was less than the fee simple). Here the copyholder's interest was the copyhold fee, subject to a lease, and the position may be regarded as analogous to that of a freeholder purchasing the interest of his lessee who has sub-leased. If this is the right view, the lease remains, and the immediate reversion has been enlarged from copyhold to freehold, otherwise than by virtue of the L.P.A., 1922. The

manorial incidents would, of course, automatically be extinguished by the merger. Put also in another way, the lessee's answer to a claim against the land by the lady of the manor in respect of any fine, heriot, etc., would be the covenant for quiet enjoyment, express or implied, binding her as his lessor's assignee. In the above opinion it is, of course, assumed that the lease was made in accordance with the custom of the manor, since it is duly enrolled, and that it does not throw customary manorial incidents on the lessee. If it does so, since "land" in the L.P.A., 1922, includes leaseholds (see s. 188 (1)) and land other than enfranchised land, can be the subject of an extinguishment agreement under s. 138 (1), it can be freed from manorial incidents by such an agreement. But, if otherwise, the purchaser of the leasehold interest does not appear to be concerned with the title of the reversion, and the leaseholder can sell accordingly: see L.P.A., 1925. s. 44 (2).

House of Lords.

D. C. Thomson & Co. *v.* **McNulty.** 28th July.

LIBEL—WHETHER IT REFERRED TO PLAINTIFF—NAME OF PLAINTIFF—CAUSE OF ACTION—QUESTION FOR JURY.

The respondent began a libel action against the appellants in respect of an article in their newspaper. The only question at issue was whether the article referred to the respondent. The appellants contended that there was no cause of action. The courts in Scotland directed the issue to be tried by a jury.

Held, that the decision of the Scottish courts was right.

Hulton & Co. *v.* Jones, 1910, A.C. 20, *followed.*

This action was brought by the respondent against the appellants for damages in respect of an alleged libel contained in an article published by the appellants in their newspaper, the *Glasgow Weekly News*, on 13th March, 1926. The libel and the publication were admitted, the sole question being whether any reader of the newspaper could reasonably think that the article in question was concerning the respondent. The article, which was headed, "Glasgow Girl stows away three times," purported to describe the adventures of a girl named "Elizabeth McNulty, a twenty-three year old Anderston girl." The article stated that Elizabeth McNulty was on two occasions sentenced to a fine of five guineas with the option of a 30 days' imprisonment for attempting to secure a passage to America without payment, and that on one occasion at least she served the term of imprisonment, that on the third attempt she succeeded in getting to America, and that on her return to Liverpool she was sent home to Glasgow by the Liverpool authorities. The respondent was named Elizabeth McNulty, was twenty-one years of age, and resided in Anderston. She alleged that the article was concerning her, that it was false and malicious, and that among her friends and acquaintances in Anderston the article had been generally understood as referring to her. In April, 1926, the appellants inserted a small paragraph in their newspaper to the effect that the article did not refer to the respondent, but made no apology. The Lord Ordinary directed an issue to be tried by a jury and his decision was affirmed by the Second Division of the Court of Session.

Lord DUNEDIN, in giving judgment, said the appellants published an article relating to the somewhat startling experiences of a young woman, named Elizabeth McNulty, living in Anderston, and aged twenty-three. Those adventures showed that she was guilty of conduct which made her amenable to the law, and it was not denied that the statements were calumnious. The action was brought by Elizabeth McNulty, who lived at Anderston, and whose age was twenty-one. She averred that any person reading the article might reasonably suppose that it referred to her, and that many of her friends thought that it did. The question was, whether she was entitled to have an issue approved which would be put before a jury. It was useless for him to say anything on the law of the matter as it had been determined in the case of *Hulton & Co.* v. *Jones*, 1910, A.C. 20, 26 T.L.R. 128. He was quite unable to say that there was not here a good case for inquiry. It might be torn to pieces at the trial because it might then be shown that the article could not possibly relate to her, or that it related to a person who was not the respondent, and on that finding the defendant would escape. But as matters stood he had no hesitation in saying that the decision of the majority of the Inner House was right. The appeal should be dismissed.

Lord SUMNER and Lord ATKINSON, concurred.

COUNSEL: *Macmillan*, K.C., *Keith*, K.C., and *Arthur P. Duffes* (all of the Scottish Bar); *George Morton*, K.C., and *James Guy* (both of the Scottish Bar).

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Smith: Franklin** *v.* **Smith.** Clauson, J. 22nd July.

SETTLEMENT—COVENANT TO SETTLE AFTER-ACQUIRED PROPERTY—CONSTRUCTION—WILL—MADE AFTER SETTLEMENT—BEQUEST OF INCOME TO COVENANTOR FOR LIFE UNTIL ANY EVENT SHALL HAPPEN WHEREBY HE WOULD CEASE TO BE ENTITLED TO RECEIVE SAME.

An attempt by a testator to exclude the benefits accruing to his son under his will from the operation of the son's covenant to settle after-acquired property is ineffectual.

Scholfield *v.* Spooner, 1884, 26 Ch. D. 94.

A covenant to settle after-acquired property does not deprive a settlor of his interest under a bequest of income to him for life "until any event should happen whereby he would cease to be entitled to receive the same."

In re Crawshay, 1891, 3 Ch. 176, *applied.*

Originating Summons.

This was an originating summons taken out by the trustees of the will asking the questions (*inter alia*) whether upon the death of the testator on 16th July, 1926, upon the true construction of the will and his son's marriage settlement and in the events which had happened the interests of Martin Gwynne Smith under his father's will in any and which of the properties ought, pursuant to the covenant in his settlement of 1898, to be transferred to the trustees of that settlement, or whether the trusts of those properties declared by the will in favour of Martin Gwynne Smith were still subsisting. The facts were as follows: In his marriage settlement made in 1898 there was a covenant by Martin Gwynne Smith, the husband, to settle all property to which, during the continuance of the marriage, he should become entitled not exceeding £1,000, upon trust to convert the same into money and to hold the same upon trust for the wife for life, and afterwards for the children of the marriage, with a proviso that if any of such after-acquired property should consist of income payable to the covenantor during his life such income should not be sold without his consent, but should until sale be paid to the person or persons to whom the income of the moneys to arise from such conversion should for the time being be payable. In 1920 the husband's father, by his will, gave a certain house, his trade effects and a sum of money to trustees, upon trust that his trustees should, during the life of his son, Martin Gwynne Smith, or until he should do or attempt to do or suffer any act or thing or until any event should happen by or in consequence of which he would cease to be entitled to receive the same or any part thereof, pay the net rents and income thereof to his said son. From and after the determination of those trusts further trusts were declared of the son's interest in favour of his wife and children, and the testator expressed

it to be his intention that the benefits accruing to his son under his will should not be liable to become subject to or be affected by any covenant he might have entered into in the settlement made upon his marriage for the settlement of any after-acquired property.

CLAUSON, J., after stating the facts, said: In the first place, it is plain that the attempt made by the testator to exclude the benefits accruing to his son under his will from the operation of the son's covenant to settle after-acquired property contained in the settlement of 1898 was ineffectual: see *Scholfield* v. *Spooner, supra*. Then, if upon his father's death it became the son's duty to procure the transfer of his interests under his father's will to his settlement trustees—as clearly it was his duty, apart from the provision for forfeiture in the gift to him in the will—the question arises, whether that circumstance constitutes an event within the meaning of the gift of the protected life interest in the will, the happening of which must make a forfeiture of that gift. As between the son and the trustees of his settlement, at the moment of his father's death they had the right to call upon him to perform his covenant, and, having regard to the well-known principle that equity considers that as done which ought to be done, upon the death of the testator the position was that the son must be taken to have transferred his interests under the will to the settlement trustees, with the result that an event was brought about during the subsistence of those interests which by the terms of the gift resulted in their being forfeited. As to the effect of the settlement upon the gift in the will applying the reasoning of the decision in *In re Crawshay, supra*, the interest of the son under the will was of such a nature that, if the covenant did in terms apply, the effect of the covenant itself was to destroy that interest at the moment of its creation, with the consequence that the interest given by the will was not an interest to which the settlement could be held to apply; and, according to the same reasoning, the further consequence ensued that, as no event contemplated by the will which would deprive the son of his interests thereunder had so far happened, there had been no forfeiture of those interests, which accordingly continued to subsist until an event (other than the settlement of 1898, coupled with the death of the testator) should happen, which under the provisions of the will should effect a forfeiture.

COUNSEL: *C. L. Fawell; David Bowen; F. E. Farrer; J. M. Paterson.*

SOLICITORS: *Clinton & Co.*, for *Harrison & Ricketts*, Worcester; *Vizard, Oldham, Crowder & Cash*, for *Garrard and Anthony*, Worcester.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

Achilli and Others *v.* Tovell and John Tovell Limited.

Astbury, J. 27th July.

RESTRICTIVE COVENANTS—BREACH—SUBSTANTIAL DAMAGE—ASSIGNEES WITH NOTICE—PRIORITY OF CONTRACT—MANDATORY INJUNCTION—DISCRETION.

The proposition that on the breach of restrictive covenant involving substantial damage, the court is bound to grant a mandatory injunction, is not confined to the enforcement of a legal restrictive covenant, but applies to enforcement against persons who are not covenantors but merely bound in equity as assignees with notice.

Sharp *v.* Harrison, 1922, 1 Ch. 502, *distinguished.*

Witness action.

The plaintiff Achilli owned a small cottage called 98 Magdalen Street, Colchester. When the adjoining property was sold in 1916 to the defendant Tovell he covenanted for himself and his assigns with the vendors who were the predecessors in title of the plaintiff Achilli and their assigns, and also separately with each of them and her or his assigns that no building should be erected on the premises thereby assured which would materially restrict or interfere with the free access of light and air to the windows then existing of No. 98 Magdalen Street. In 1917 the defendant Tovell built a ten-foot wall in place of the existing fence between the properties, and no objection was made. The defendant company John Tovell Limited was incorporated as a private company to purchase the defendant Tovell's business in 1920. No formal conveyance was executed, but the company went into possession as owners of the Tovell property and business. In 1926 the defendant company asked the plaintiff Achilli's rent collector for permission to put scaffolding on the plaintiff Achilli's premises with a view to raising the stables. The rent collector only knowing of old stables a good way from No. 98 granted the permission; but the company were referring to new stables erected in 1917, just the other side of the ten-foot wall adjoining 98. The rent collector only acted for the plaintiff in small matters and had no authority to authorize a breach of covenant, and also the permission *quantum valeat* was given under a misapprehension as to the stables referred to. Without knowledge of the misapprehension and relying on the permission, the defendant company raised the wall to nineteen feet, and thereby cut off light and air to the windows of No. 98, which were close to the wall. This was done in April, 1926, without putting scaffolding on the plaintiff's premises, and reported by the rent collector to the plaintiff in Naples, and she and her tenants started this action. The whole question was, could the plaintiff in these circumstances insist on a mandatory injunction.

ASTBURY, J., after stating the facts, said: I am extremely loth to order a large and substantial wall to be pulled down. The cottage is of small value. The damages are easily ascertainable or the owner if willing could be bought out. She is not, however, willing, and the court cannot compel her to accept damages. The company contends that they are not covenantors but merely bound in equity as assigns with notice, and therefore the court has a wider discretion. But the restriction is intended to protect the plaintiff Achilli's property, and the breach has caused substantial damage. The court has therefore no discretion to give damages in lieu of an injunction. I am sorry that the plaintiff Achilli will not accept damages which the defendant company are perfectly able to pay, but as she refuses to do so I have no discretion to refuse a mandatory order. The defendant company must pay the plaintiff's costs. There will be no order as to the defendant Tovell's costs, but he may take his £50 out of court. The company's premises are large, important and expensive, and I cannot help hoping that though the company has no equity in its favour the plaintiff Achilli may still prove willing to accept full compensation instead of having the wall pulled down. Execution will accordingly be stayed for one month to see if any arrangement can be made, and if notice of appeal is given within a fortnight, execution will be stayed till after the appeal is heard.

COUNSEL: *Owen Thompson*, K.C., and *D. D. Jones*; *Charles Harman.*

SOLICITORS: *Doyle, Devonshire & Co.*, for *Jones & Son*, of Colchester; *Whites & Co.*, for *Sparling, Son and Benham*, of Colchester.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Wisbech Rural District Council *v.* Ward.

Sankey, J. 19th July.

BUILDING CONTRACT—ARCHITECT'S LIABILITY FOR NEGLIGENCE—INTERIM CERTIFICATES ISSUED—MATERIALS PAID FOR TWICE—POSITION OF ARCHITECT—BUILDER'S AGENT OR ARBITRATOR.

An architect under a building contract who had issued certain interim certificates was held upon the facts of the case to be in the position of an agent to the building owner, and, as such, liable for negligence when the same materials had been paid for twice.

An architect in the position of an arbitrator or a quasi-arbitrator is only liable when fraudulent intention is proved as distinct from mere negligence.

The plaintiffs in this action, the Wisbech Rural District Council, entered into a contract with Wright and Wilson on the 30th September, 1920, for the erection of a number of houses under a housing scheme. The defendant, Frank Ward, was the architect under the contract. Whilst the houses were in course of erection during the years 1920-21, the defendant, in pursuance of cl. 29, gave twelve interim certificates, the first on the 29th November, 1920, and the last on the 24th November 1921. Clause 29 states: "No certificate of the architect, except for the final balance, shall be considered conclusive evidence of any works or materials to which it relates nor of the value thereof, nor shall it relieve the contractor from his liability to make good any defects as provided by these conditions, nor shall it in any way prejudice the employers in the final settlement of the accounts in any case where the contractor has been overpaid during the progress of the works." Under the housing scheme the Ministry of Health had certain rights by which they could enforce the use of war material which the Disposals Board had for sale. The defendant gave some interim certificates and documents under which the plaintiffs had to pay both the builders and the Board for the same materials, chiefly consisting of baths; in consequence they paid the sum of £221 3s. twice over. In October, 1923, the defendant examined the plaintiff's accounts and admitted having made a mistake which involved the double payment, and promised to obtain a refund from the builders. The latter however had dissolved partnership, and one of them had gone bankrupt. The plaintiffs then brought this action to recover the sum of £221 3s. from the defendant. On behalf of the defendant it was contended (*a*) that he was a quasi-arbitrator and therefore not liable; (*b*) that the action was premature because no final certificate, under which there is power to rectify, had been issued; (*c*) that if the defendant was negligent, so also were the plaintiffs for not keeping and checking their accounts.

SANKEY, J., after stating the facts, dealt briefly with contentions (*b*) and (*c*) (*supra*). He was of the opinion that by reason of the delay caused by the defendant there was no power to rectify by giving a final certificate; and that the plaintiffs had been in no way negligent or guilty of any breach of duty which they owed to the defendant. With reference to the first contention, that the defendant was a quasi-arbitrator, his lordship said that in his opinion an architect under a building contract may occupy two positions: (1) He may be merely an agent of the building owner; (2) he may be in the position of an arbitrator or quasi-arbitrator. In the first case he may be liable for negligence, in the second his duty is to exercise an impartial judgment, and he will not be liable for mere negligence, he will only be liable when he has been shown to be fraudulent. He referred to a passage from the judgment of the Master of the Rolls, SMITH, L.J., in *Chambers* v. *Goldthorpe* (1901, 45 SOL. J., 325; 1901, 1 K.B., 624 at p. 634), where the liability of an agent of a building owner is laid down, and stated that the contract must be looked at to see whether or not in giving an interim certificate the architect was acting as an arbitrator or quasi-arbitrator. On the facts of this case he came to the conclusion that, in giving the interim certificates, the defendant was not acting as an arbitrator or quasi-arbitrator, but merely as an agent for the plaintiffs, and was negligent and liable to pay the amount claimed.

COUNSEL: For the plaintiffs, *Sir Malcolm Macnaghten*, K.C., and *Gerald Dodson*; for the defendant, *Schiller*, K.C., and *Linton Thorp*.

SOLICITORS: *Lee, Ockerby and Co.*, for *Sharp, Wade and Whittome*, Wisbech; *Withers, Bensons, Currie, Williams & Co.*, for *Metcalfe, Copeman and Pettefar*, Wisbech.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

The Law Society.

PROVINCIAL MEETING.

The Council of The Law Society have settled the course of procedure to be adopted at the Forty-fourth Provincial Meeting, to be held at Sheffield on Tuesday and Wednesday next, the 27th and 28th inst., as follows:—

On Tuesday the members will meet at the Town Hall, Sheffield, at 10.30 a.m., the President, Mr. Cecil Allen Coward (London) taking the chair. The President will deliver his address, and the following Papers will then be read and discussed:—

"The Jury System: its Cause and Cure," Mr. J. W. Pickles (Halifax).

"The New Code of Intestate Succession," Mr. D. Gwyther Moore (Derby).

"A Public Conciliation System," Mr. J. J. Sprigge (Slough).

"Modern Changes in Ancient Coroner's Law," Mr. J. A. Howard-Watson (Liverpool).

The meeting will adjourn at 4.30 p.m.

On Wednesday the reading and discussion of Papers will be resumed at 10.45 a.m. as follows:—

"The Contemplated Changes in Company Law," Mr. Charles L. Nordon, LL.B. (London).

"Some Decisions on the Property Acts," Mr. Harold Potter (Birmingham).

The meeting will conclude at 1.15 p.m.

N.B.—The President may make such alteration in the order of the Papers as he may think convenient.

SCHOOL OF LAW.

The Autumn Term will open on 29th September. The subjects to be dealt with during the Term will be, for Intermediate students: (i) Introductory Course (Mr. Segar); (ii) Personal Property and Status (Mr. Formoy and Mr. Wade); (iii) Criminal Law and Civil Procedure (Mr. Landon and Mr. Segar); (iv) Elementary Equity (Mr. Danckwerts); (v) Outline of Accounts and Book-keeping (Mr. Dicksee). The subjects for Final students will be: (i) Company Law and Bankruptcy (Dr. Burgin); (ii) Conveyancing and Probate (Mr. Danckwerts); (iii) Law of Contract (Mr. Chorley). There will be courses on Private International Law (Mr. Gahan) and Common Law (Tort) (Mr. Segar) for Honours candidates, and on (i) Constitutional Law (Mr. Wade) and (ii) Roman Law I (Mr. Landon) for Degree students.

The courses on Personal Property and Status and on Criminal Law and Civil Procedure will be taken in the morning (10.30 a.m. to 12.30 p.m.) and in the afternoon (4 p.m. to 6 p.m.). *Students must notify the Principal's Secretary before 29th September, if they wish to attend the afternoon in preference to the morning lectures and classes.*

Students can obtain copies of the detailed Time-Table and of the Regulations governing the three studentships of £40 a year each, offered by the Council for award in July next, on application to the Principal's Secretary.

The Principal (Mr. Wade) will be in his room at the Society's Hall on the following days, for the purpose of advising students on their courses of study for the Term:—

Thursday, 29th September	10.30 a.m. to 12.30 p.m. and 2 p.m. to 5 p.m.—Intermediate students.
Friday, 30th September ..	10.30 a.m. to 12.30 p.m. and 2 p.m. to 5 p.m.—Final and Degree students.

Incorporated Accountants.

The next Examination of Candidates for admission into the Society of Incorporated Accountants and Auditors will be held on 7th, 8th, 9th and 10th November, 1927.

Women are eligible under the Society's Regulations to qualify as Incorporated Accountants upon the same terms and conditions as are applicable to men.

LAW COURTS WINDOW SMASHED.

A well-dressed, middle-aged woman, Jennie Witton, who refused to give her occupation or address, was charged at Bow-street Police Court on Wednesday before Mr. Fry, with committing wilful damage at the Law Courts. A police constable stated that on Tuesday evening the woman took a hammer from under her coat and with it smashed one of the external windows of the building. She was quite sober. She said that she had a grievance, but did not say what it was. Witton told the magistrate that she was now very sorry for what had happened. She was fined 5s. and ordered to pay the amount of the damage, 30s.

Legal Notes and News.

Honours and Appointments.

The Treasury Commissioners have appointed The Hon. E. EVAN CHARTERIS. K.C., to be one of the additional Trustees to the National Gallery of British Art. Mr. Charteris was called to the Bar in 1891 and took silk in 1919.

Mr. WILLIAM WOODWARD, Solicitor, Deputy Town Clerk, Middleton, Lancs., has been appointed Deputy Town Clerk of the County Borough of Dudley. Mr. Woodward was admitted in 1925.

Mr. ALFRED ROLFE WHITTINGHAM, Solicitor (the Assistant Clerk) has been appointed Clerk to the Nantwich Urban District Council, in succession to his father, Mr. A. E. Whittingham, who is retiring on account of ill-health. Mr. A. R. Whittingham was admitted in 1920.

Mr. F. W. NEWBOLD (Deputy Clerk) has been appointed Clerk to the Coalville Urban District Council.

An illuminated address and a cheque have been presented to Mr. Frederick Ryall, solicitor, the first Town Clerk of Bermondsey, who is just retiring on superannuation.

The Gardeners' Company are about to present a testimonial to Mr. E. A. Ebblewhite, barrister-at-law, in recognition of his twenty-five years of service as their clerk. The presentation will be made at a Livery dinner on 1st November.

Wills and Bequests.

Mr. Llewellyn Wynn McLeod (79), solicitor, of Crossmount, Surbiton, and Lincoln's Inn-fields, W.C., left estate of the gross value of £23,672.

Mr. James McIsaac, solicitor and bank agent, of Royal Bank House, Elgin, of Messrs. Stewart and McIsaac, left estate of the gross value of £15,476.

Mr. Arthur Wright, Junr., solicitor, of Pritchatts-road, Edgbaston, and of New-street, Birmingham, left estate of the gross value of £37,253.

THE SLAVERY JUDGMENT IN SIERRA LEONE.

The question of the recent judgment of the Supreme Court of Sierra Leone (upholding the right, under Sierra Leone law, of a slave-owner to recapture an escaped slave) was raised in the Sixth Committee of the Assembly of the League of Nations on Tuesday last. Sir Edward Hilton Young said the decision came as a disagreeable surprise to the British Government and revealed a hiatus in the legislation of Sierra Leone which was being remedied by urgent measures as quickly as possible.

In the course of the discussion of the Slavery Convention by the Sixth Committee the Maharajah of Kapurthala said he desired to correct a misunderstanding for which the Indian delegation to the last Assembly had been inadvertently responsible—namely, that the State of Nepal, in liberating 60,000 slaves at great cost, had been influenced by the League of Nations. The fact was that the action had been taken quite independently of the League and before the League had taken up the matter at all.

The Maharajah then referred to the action of the Khan of Kalat in abolishing private slavery and to the steps taken by Burma for the liberation of slaves. "I am able to inform you," he concluded, "that the Government of India has brought the Slavery Convention to the notice of the Indian Rulers, and I can say confidently that the Ruling Princes will earnestly hasten to remove any vestiges of slavery still surviving. In my own State slavery and forced labour have long since been abolished."

Several speakers praised the fullness of the British report on slavery, as compared with the meagreness of others, and congratulated the British representatives on this fact. The British report showed that in the territories under British influence roughly 200,000 slaves had been liberated in the last fifteen years.

The Committee approved the Slavery Convention and appointed Sir Edward Hilton Young as *Rapporteur* to the Assembly.

HOBART SOLICITOR FOUND SHOT.

Mr. Thomas Okines, solicitor, was found dead in his office in Hobart, Tasmania, on Tuesday, with a gunshot wound in his head. A Royal Commission has been inquiring into the administration of the Public Trust office, and Mr. Okines was one of the principal witnesses, being subjected to a searching cross-examination. He was a partner of Mr. A. G. Ogilvie, Tasmanian Attorney-General.

NOISY MOTOR VEHICLES.

HOME SECRETARY'S INSTRUCTIONS TO THE POLICE.

The Home Office, in a statement issued recently, states: "In August, 1926, the Home Secretary issued a notice to the press calling the attention of all users of motor vehicles, and particularly motor-cycles, to the provisions of the law relating to the silencing of such vehicles, and warning them that he was instructing the police to take steps to secure a more active enforcement of the law on this subject. In pursuance of the policy then announced, special attention has been given to the matter in the Metropolitan Police District during the last year, but in spite of the large number of proceedings taken, the position in London is, in the Home Secretary's view, not yet satisfactory, and he has recently issued further instructions with a view to the enforcement of the law in London with the strictest rigour.

"From the information which has reached him, and from personal observation, it appears to the Home Secretary that in many parts of the country outside London there is still much ground for dissatisfaction with the present state of affairs, and he has accordingly caused a circular letter to be addressed to the Chief Constables in England and Wales asking them to co-operate with him in the area within their jurisdiction in abating what has now become an intolerable nuisance.

"Motorists are, therefore, again warned that if they desire to escape liability to the fine of £10 provided by the law, they must see that their machines are effectively silenced, and that they must use and drive them so as to reduce the noise of their exhausts as far as may be reasonably practicable."

A WARNING TO SOLICITORS.

We are informed by an eminent firm of solicitors practising in the North of England that on one occasion recently a London resident applied to them for particulars of a house that was advertised for sale in one or two provincial papers, and in the letter containing the application the following inquiry was incorporated: "Can you also recommend a firm of London or provincial stockbrokers." On showing the letter of application to their stockbrokers the latter informed them that this gentleman had obtained an introduction to them by similar means and that one transaction had taken place, with very unsatisfactory results. The firm making this communication suggested to the applicant when replying that the information he sought could be obtained through his bankers.

BRITISH CONSULAR COURT IN EGYPT.

It is understood, says *The Times*, that the Privy Council will soon be called on to approve an amendment to the Order in Council of 1910, under which British subjects in Egypt are governed. The amendment is designed to prevent the British Consular Courts from being ousted, as is at present the case, in matters where the Mixed Tribunals have limited criminal jurisdiction but the offender could receive a more severe penalty under English law. The amendment will, however, only operate where a case has not yet come before the Mixed Tribunals. Furthermore, regulations are being drafted to enable the British Consular Courts to apply the provisions of English law relating to such offences, which, even if they had jurisdiction, they could not at present apply in Egypt.

THE RETURN OF THE LORD CHIEF JUSTICE.

The Lord Chief Justice returned to town on Wednesday from a long tour in Canada and the United States, during which he addressed the Bar Associations in Toronto and Buffalo.

BELGIAN COURT OF APPEAL.

M. de Lev de Cecil, Honorary President of the Belgian Court of Appeal, and senior magistrate of the kingdom, has died in his seventy-sixth year.

FINE ON MOTORIST REDUCED.

Mr. Cecil Whiteley, K.C., and a Bench of Justices, at the London Sessions on 21st inst, dismissed the appeal, with costs, of Mr. Herbert Hogg, a solicitor's managing clerk, against a conviction at Marlborough-street Police Court, for driving a motor car in a manner dangerous to the public in Regent-street. The bench reduced the fine of £10 to £5, and removed the suspension of Mr. Hogg's licence, imposed by Mr. Mead. Sir Henry Curtis Bennett, K.C., said that Hogg had never been summoned before under the Motor-car Act. This was nothing more than a technical offence.

Court Papers: Vacation Notice.

High Court of Justice.

LONG VACATION, 1927.—NOTICE (No. 2.)

During the remainder of the Vacation, all applications "which may require to be immediately or promptly heard," are to be made to the Hon. Mr. Justice MACKINNON.

COURT BUSINESS.—The Hon. Mr. Justice MACKINNON will sit in the Lord Chief Justice's Court, Royal Courts of Justice, at 10.30 a.m., on Wednesday, in each week, for the purpose of hearing such applications of the above nature, as, according to the practice in the Chancery Division, are usually heard in Court.

No case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

The necessary papers, relating to every application made to the Vacation Judges (see notice below as to Judges' Papers), are to be left with the Cause Clerk in attendance, Chancery Registrars' Office, Room 136, Royal Courts of Justice, before 1 o'clock, two days previous to the day on which the application is intended to be made.

URGENT MATTERS WHEN THE JUDGE IS NOT PRESENT IN COURT OR CHAMBERS.—Application may be made *in any case of urgency*, to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Office, Royal Courts of Justice, London, W.C.2."

On applications for injunctions, in addition to the above a copy of the writ must also be sent.

The Papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice.

CHANCERY CHAMBER BUSINESS.—The Chambers of Mr. Justice ASTBURY and Mr. Justice CLAUSON will be open for Vacation business on Tuesday, Wednesday, Thursday and Friday only in each week, from 10 to 2 o'clock.

KING'S BENCH CHAMBER BUSINESS.—The Hon. Mr. Justice MACKINNON will sit for the disposal of King's Bench Business in Judge's Chambers at 10.30 a.m. on Tuesday in every week.

PROBATE AND DIVORCE.—Summonses will be heard by the Registrar, at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.30 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 7th and 21st September, at the Principal Probate Registry at 12.15.

Decrees will be made absolute on Wednesdays, the 14th and 28th September.

All Papers for making Decrees absolute are to be left at the Contentious Department, Somerset House, on the preceding Thursday, or before 2 o'clock on the preceding Friday. Papers for Motions may be lodged at any time before 2 o'clock on the preceding Friday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m., except on Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

JUDGE'S PAPERS FOR USE IN COURT.—Chancery Division.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrars' Office, Room 136, Royal Courts of Justice, on or before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

(1) Counsel's certificate of urgency or note of special leave granted by the Judge.

(2) Two copies of writ and two copies of pleadings (if any).

(3) Two copies of notice of motion, one bearing a 10s. impressed stamp.

(4) Office copy affidavits in support, and also affidavits in answer (if any).

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the Judge's Clerk in Court for the return of their papers.

VACATION REGISTRAR.—Mr. RITCHIE (Room 188).

Chancery Registrars' Office,
Royal Courts of Justice.
September, 1927.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 29th September, 1927.

	Middle Price 21th Sept	Interest Yield. £ s. d.	Yield with Redemption. £ s. d.
English Government Securities.			
Consols 4% 1957 or after	84 15/16	4 14 0	—
Consols 2½%	54½	4 12 0	—
War Loan 5% 1929-47	102½	4 18 0	4 18 6
War Loan 4½% 1925-45	97	4 12 6	4 16 6
War Loan 4% (Tax free) 1929-42	99⅞xd	4 0 0	4 0 0
Funding 4% Loan 1960-90	87⅛	4 12 0	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93⅜	4 6 0	4 7 6
Conversion 4½% Loan 1940-44	97⅝	4 12 0	4 15 6
Conversion 3½% Loan 1961	74⅜	4 14 0	—
Local Loans 3% Stock 1921 or after	63	4 15 6	—
Bank Stock	257½	4 13 0	—
India 4½% 1950-55	93½	4 16 6	4 19 0
India 3½%	70	5 0 0	—
India 3%	59⅞	5 0 0	—
Sudan 4½% 1939-73	92⅜	4 17 0	4 18 0
Sudan 4% 1974	84¼	4 14 6	4 18 0
Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years)	80¾	3 14 0	4 12 6
Colonial Securities.			
Canada 3% 1938	85	3 11 6	4 18 0
Cape of Good Hope 4% 1916-36	92½xd	4 6 6	5 0 6
Cape of Good Hope 3½% 1929-49	81	4 6 6	5 0 0
Commonwealth of Australia 5% 1945-75	98½	5 2 0	5 3 0
Gold Coast 4½% 1956	95	4 14 6	4 17 6
Jamaica 4½% 1941-71	90xd	5 0 0	5 0 0
Natal 4% 1937	92	4 7 0	5 0 0
New South Wales 4½% 1935-45	90¾	5 0 0	5 7 0
New South Wales 5% 1945-65	98¼	5 2 0	5 4 0
New Zealand 4½% 1945	95⅝	4 14 0	4 17 6
New Zealand 5% 1946	102½	4 17 6	4 16 6
Queensland 5% 1940-60	97	5 3 0	5 4 0
South Africa 5% 1945-75	102½	4 17 6	4 18 6
S. Australia 5% 1945-75	98⅝	5 1 6	5 2 6
Tasmania 5% 1945-75	100½	5 0 0	5 1 0
Victoria 5% 1945-75	99⅝	5 0 6	5 1 0
W. Australia 5% 1945-75	99	5 1 0	5 2 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	63½	4 15 0	—
Birmingham 5% 1946-56	102	4 18 0	4 18 6
Cardiff 5% 1945-65	101⅛	4 19 0	4 19 0
Croydon 3% 1940-60	68	4 8 6	5 0 0
Hull 3½% 1925-55	77¾	4 10 0	5 0 0
Liverpool 3½% redeemable at option of Corpn.	72¾	4 16 6	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52¾	4 15 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63	4 15 6	—
Manchester 3% on or after 1941	63½	4 15 0	—
Metropolitan Water Board 3% 'A' 1963-2003	62½	4 16 0	4 17 0
Metropolitan Water Board 3% 'B' 1934-2003	63¾	4 14 0	4 16 0
Middlesex C. C. 3½% 1927-47	82	4 5 6	4 17 0
Newcastle 3½% Irredeemable	73	4 16 0	—
Nottingham 3% Irredeemable	63½	4 14 6	—
Stockton 5% 1946-66	101½	4 19 0	4 19 6
Wolverhampton 5% 1946-56	102¾	4 17 0	4 18 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	81½	4 18 0	—
Gt. Western Rly. 5% Rent Charge	98½	5 1 6	—
Gt. Western Rly. 5% Preference	92½	5 8 0	—
L. North Eastern Rly. 4% Debenture	75	5 7 0	—
L. North Eastern Rly. 4% Guaranteed	69½	5 15 6	—
L. North Eastern Rly. 4% 1st Preference	62¼	6 8 0	—
L. Mid. & Scot. Rly. 4% Debenture	80½	4 19 6	—
L. Mid. & Scot. Rly. 4% Guaranteed	76	5 5 6	—
L. Mid. & Scot. Rly. 4% Preference	71	5 12 6	—
Southern Railway 4% Debenture	79¾	5 0 6	—
Southern Railway 5% Guaranteed	95	5 5 0	—
Southern Railway 5% Preference	86¾	5 15 0	—